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Supreme Court of the United States

OCTOBER TERM, 1928.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

No. [redacted] 6

RAUL ROGERIO GONZALEZ, by his Guardian *ad litem* Leon Gonzalez,

Petitioner,

v.

THE ROMAN CATHOLIC ARCHBISHOP OF MANILA,

Respondent.

BRIEF ON BEHALF OF RESPONDENT.

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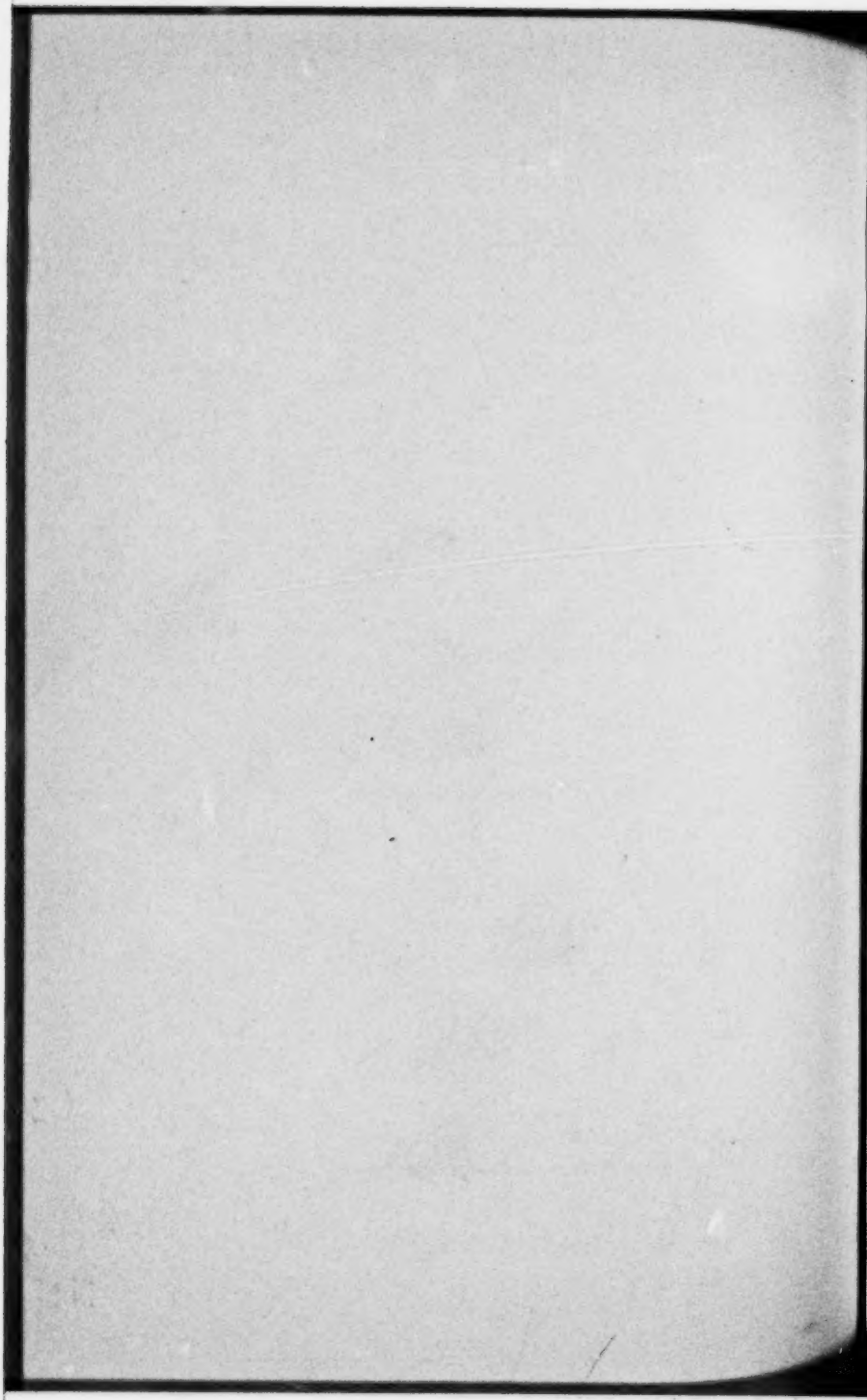

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Supreme Court of the United States

OCTOBER TERM—1928.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

No. 226.

RAUL ROGERIO GONZALEZ, by his Guardian *ad litem* Leon Gonzalez,

Petitioner,

v.

THE ROMAN CATHOLIC ARCHBISHOP OF MANILA,

Respondent.

BRIEF ON BEHALF OF RESPONDENT.

CERTIORARI to a judgment of the Supreme Court of the Philippine Islands, which reversed a judgment of the Court of First Instance of Manila, the court of original jurisdiction, in favor of the plaintiff, the above named petitioner, Raul Rogerio Gonzalez (hereinafter called "plaintiff"), against the defendant as a corporation sole, viz., The Roman Catholic Archbishop of Manila (hereinafter called "respondent" or "defendant"). As the statement of the case in the brief filed on behalf of the plaintiff does not contain all that is material to the consideration of the questions presented, and as the rule of this court in regard to briefs cannot be complied with by referring the court for material facts to the opinions below, as is done in such brief, it has been deemed necessary in the present brief on behalf of the respondent to state the case fully, but as concisely as practicable. It is alleged in plaintiff's brief that the opinions

below state the facts and present both sides of the case fully and fairly; but, on the contrary, in the opinion of defendant's counsel, none of them is full or contains all the material facts, and some inferences or conclusions of fact therein are quite unwarranted and clearly erroneous. Under these circumstances, it is proper for the court to examine the record and determine the facts for itself. *Strong* v. *Repide,* 213 U. S. 419, 429; *Thomson Co.* v. *Ford Motor Co.,* 265 U. S. 445, 447.

In the appendix to this brief will be found definitions of various canonical terms, Spanish words, etc., as well as the pertinent provisions of the Codex Juris Canonici of 1917, with the English translation in a parallel column, and extracts from authoritative writers on Canon Law, etc. There will also be found a memorandum or review of the Spanish law in force in and prior to 1898, prepared by the well-known jurist Dr. Antonio S. de Bustamante, of Havana, Cuba. The court will take judicial notice of the Spanish law so far as it affects the Philippine Islands. *Ponce* v. *Roman Catholic Church,* 210 U. S. 296, 309. The plaintiff contends that the Code of Canon Law of 1917 in certain sections constitutes a law impairing his treaty rights and the obligation of an alleged contract which he is legally entitled to enforce in a civil court of the United States for his personal benefit.

The judgment of the Court of First Instance of Manila, which was reversed by the Supreme Court of the Philippine Islands, ordered (a) that the defendant as the Roman Catholic Archbishop of Manila, forthwith appoint the plaintiff as a chaplain of the Roman Catholic Church under a chaplaincy founded in 1820; (b) that the defendant pay to the plaintiff the sum of 173,725 pesos, being the rentals and income of the property of such chaplaincy from January 1,

1911, to December 31, 1925, less certain expenses, and further pay to the plaintiff, through his guardian or guardian *ad litem,* from the date of his appointment as chaplain the net income of such property from time to time as collected; (c) that any legal rights of the plaintiff with reference to the cancellation of a Torrens certificate of title obtained by the defendant covering the property of the chaplaincy be reserved for proceedings before another court having exclusive jurisdiction, and (d) that, pending the final determination of the action, the defendant allow and pay to the plaintiff out of the accumulated funds of the chaplaincy for his maintenance, education and legal expenses a pension of 1,000 pesos a month (Record pp. 292-4). The legal value of a gold peso is fixed by Act of Congress "at the rate of one dollar for two pesos", and hence the peso is to be taken as worth fifty cents of the legal money of the United States (32 Stat. 952).

This judgment of the Court of First Instance of Manila was reversed by the Supreme Court of the Philippine Islands, and the latter decision of reversal is now before this court for review.

The writ of certiorari was granted upon default of the respondent.

STATEMENT OF THE CASE.

The controversy presented to this court for review under the writ of certiorari arises with relation to a chaplaincy of the Roman Catholic Church founded in 1820 in pursuance of the will of Doña Petronila de Guzman, dated March 13, 1816 (R. 32). The chaplaincy was established by the representative authority of the Roman Catholic Church on May 12, 1820 (R. 56). The dates of the death of the testatrix and of the admission of her will to probate are

not contained in the record, but were prior to February 29, 1820 (R. 42). The plaintiff Raul Rogerio Gonzalez is an infant born September 16, 1912, and was in his tenth year of age when presented to the defendant, Roman Catholic Archbishop of Manila, for appointment as a chaplain of the Roman Catholic Church (R. 36, 37).

The pertinent provisions of the will as recited in the stipulation of facts are contained in the ninth, tenth and eleventh items or articles thereof, which read as follows (R. 33-34):

> "Ninth Item:—I declare and charge that the new house situated in this said town and bounded by this house of my residence toward the right of its exit, which between myself and my deceased sister, Da. Vicenta de Guzman, we have constructed with our own money, the expenses of which amount to one thousand six hundred pesos without including the value of the lot on which it is erected and I charge my executor to constitute said house into a collative chaplaincy, the foundation of which they shall effect immediately after my death, electing for chaplain D. Esteban de Guzman, legitimate son of my grandson, Dn. Jose Telesforo de Guzman, and in his default, the nearest relative, and in default of the latter, a collegian of San Juan de Letran, who should be an orphan *mestizo*, native of this said town, and I request the Father chaplain to celebrate sixty masses annually, which should be said in the churches of the City of Manila or in those of its vicinities, and in privileged altars, in behalf of the souls of my father, Dn. Tomas de Guzman, and of my mother, Dña. Sebastiana de Jesus, and my brothers and sisters, and for me, the testatrix, after my days.

"Tenth Item:—It is my will that for patron of said chaplaincy my executors name the Father President of the College of San Juan de Letran.

"Eleventh Item:—I appoint my first executor as administrator of the chaplaincy which shall be founded on the house referred to, during the minority of said chaplain."

The will was in Spanish, and the translation quoted above was accepted below as accurate. In the opinion of the trial court, however, the original Spanish of part of the language of the textatrix in the ninth item is quoted (R. 275), and this quotation is printed below in a column parallel to the English translation for the convenience of the court, viz.:

English translation (R. 240).	Spanish (R. 275).
—electing for chaplain D. Esteban de Guzman, legitimate son of my grandson Dn. Jose Telesforo de Guzman, and in his default, the nearest relative, and in default of the latter, a collegian of San Juan de Letran, who should be an orphan *mestizo*, native of this said town.	—elegiendo por capellan a Don Esteban de Guzman, hijo legitimo de mi nieto Don Jose Telesforo de Guzman, y falta de este el pariente mas cercano y por defecto de este deberá ser un colegial de San Juan de Letran y sea mestizo huerfano, natural de este dicho pueblo.

In the practice of the Roman Catholic Church, chaplaincies are generally divided into two classes, known as lay and collative or ecclesiastical chaplaincies. In the well-known work of Alcubilla, entitled "Diccionario de la Ad-

ministracion Española",* (fifth edition, published in 1892, vol. ii, p. 259), and generally recognized as authoritative, these chaplaincies were defined as follows (R. 360-1):

> "A *laical chaplaincy* is that instituted without the intervention of the ecclesiastical authority: it does not require a title in order to be ordained, and the possessor is only obligated to cause to be celebrated, or to celebrate, if he is a priest, a certain number of masses in accordance with the foundation. The laical or *mercenary* chaplaincies are not subject to the ecclesiastical authority, which, with regard thereto, has no other right than to investigate if the obligations are fulfilled; and this is one of the characteristics which most distinguish the said chaplaincies from the collative chapplaincies; . . .
>
> "A *collative chaplaincy* is that instituted with the intervention of the ecclesiastical authority, and requires a title of ordination. It is called ecclesiastical because it is in the form of ecclesiastical benefice, and it is proper for the Bishop to confer it. When the foundation calls for relatives of the founder or of the persons whom he designated as trunk, to enjoy the chaplaincy, the latter is called *colativa familiar;* when individuals of a certain family are not called to the possession but the patron is authorized to appoint, then the chaplaincy is called *colativa simple* or *gentilicia.*"

And whether the chaplaincy now in question be called "colativa familiar" or "colativa simple or gentilicia", the intervention and action of the ecclesiastical authority were al-

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* Cited by this court in *Ponce* v. *Roman Catholic Church*, 210 U. S. 296, 315-16. See also other definitions in appendix.

ways necessary "and the confirmation of the bishop [was] of absolute necessity" (The Catholic Encyclopedia, vol. iii, p. 580). The property of similar chaplaincies, although disamortized (that is, released from mortmain) in Spain in and by legislation beginning in 1820 and continuing until 1867, was left undisturbed by legislation, in the Philippine Islands. See plaintiff's brief, pp. 18 and 20-21, and *Catholic Church* v. *Municipality of Badoc,* 10 Phil. Rep. 659, 671.

Plaintiff's brief (p. 17) concedes the accuracy of these definitions, but proceeds to assert (p. 18) that "The ecclesiastical character of the incumbent from time to time appears to have been a minor consideration." On the contrary it is one of the vital and outstanding features of a collative or ecclesiastical, as distinguished from a laical, chaplaincy, and this distinction lies at the very threshold of the whole case.

The stipulation of facts establishes (R. 42-58) that the testamentary executor of the deceased testatrix, such executor being the father of the first chaplain designated by the testatrix, petitioned the Roman Catholic Archbishop of Manila under date of April 24, 1820, to establish a *collative* chaplaincy in accordance with the provisions of the will above quoted, representing, among other things, that the chaplain so designated by the testatrix, namely, his own son, Esteban Sixto de Guzman, had been solemnly baptized on August 8, 1806, being then four days old (R. 47); that on January 11, 1819, the said designated chaplain was confirmed in the chapel of the Archiepiscopal Palace (R. 48), and that the property of the proposed chaplaincy netted "a rent of one hundred eighty pesos annually" (R. 50), and he prayed that the Archbishop "declare sufficient the

income (congrua) referred to and order that a title to said chaplaincy issue to my said son and to me the administrator during his minority" (R. 50). A deed of foundation was then executed by the executor for acceptance and approval by the Archbishop, which expressly provided as follows (R. 53):

> "Said property is segregated from temporal properties and transferred to the spiritual properties of this Archbishopric without its being possible to alienate or convert the property as such into any other estate for any cause, even though it be of a more pious character, protesting that if the contrary should be done from now until then, he (the executor) declares null and without value or effect whatever may be done or executed contrary to the tenor of these presents, and the said executor affirms and ratifies said condition before me and the witnesses hereinbelow named, so that by virtue of this Deed of Foundation canonical collation may be conferred on the said appointed chaplain. And for its firmness and greater validity he renounces with all solemnity the laws that may favor the said decedent, inserting and repeating herein all the clauses that may be necessary with all the requisites and conditions, so that the purpose which actuated her to do this act of piety may be duly accomplished, with the solemnities above set forth and the conditions herein inserted, which he asks and charges the above named chaplain and those who will succeed him to respect, comply and execute *ad perpetuam rei mei memoriam amen.*"

The stipulation of facts further shows that at the same time the Promotor Fiscal of the Archbishopric certified to

the Archbishop that the proposed "foundation of a collative chaplaincy of masses" is "in order and in accordance with the provision made by said testatrix in clauses nine, ten, eleven of the said will" (R. 55-6). Thereupon the Metropolitan Archbishop of the Philippine Islands, Apostolic Governor, etc., by decree approved "the foundation of the chaplaincy with all the circumstances and conditions provided for in said clause (of the will) and in the deed of foundation, as well as the imposition (charge) of seventeen hundred pesos against said building, *converting said sum into spiritual property of a perpetual character subject to the ecclesiastical forum and jurisdiction*" (R. 57), and the great grandson was appointed as collative chaplain, but not his father (R. 34-5).

At the time of this foundation of a collative chaplaincy in 1820, the property was of small value (R. 163); it was not located in the City of Manila, and its annual income was one hundred and eighty pesos, which was then sufficient to pay for the sixty masses directed by the will to be said in behalf of the souls of the testatrix and her relatives (R. 378). The income of one hundred and eighty pesos, therefore, provided three pesos for each of the sixty masses, or $1.50 per mass. The subsequent inclusion of the property in the City of Manila and the development and increase in values under the rule of the United States have increased the rentals from the property to approximately twelve thousand pesos per annum (R. 90, 91). The proof is that the ordinary charge for saying a mass in Manila at the present time is five pesos, or three hundred pesos per annum for sixty masses (R. 116), and the present controversy is in respect of the surplus income, namely, whether it may properly be applied pending the filling of the vacancy in the

chaplaincy to pious uses, or must be paid over to the present plaintiff who is not yet qualified to serve as chaplain.

The stipulation of facts sets forth that during the century that has elapsed since the foundation of the chaplaincy five chaplains were appointed (R. 34-6). The first was Esteban de Guzman, the great grandson of the testatrix, whom she had designated as such in her will. He was born on August 4, 1806, was appointed chaplain by the ecclesiastical authorities on June 16, 1820, and at that time was in his fourteenth year of age, namely thirteen years and ten months of age. He served as chaplain for almost eighteen years (R. 35). The second chaplain was Vicente de Guzman, born on November 22, 1816, a brother of the first chaplain. He was twenty-one years and four months of age at the time of his appointment by the Archbishop of Manila, in 1838, and he served as chaplain for twenty-nine years. The third chaplain was Mariano de Guzman, a great great grandson of the testatrix. He was at the time of his appointment in 1867 twenty-two years and nine months of age and served as chaplain for twenty-three years. There is no proof as to whether or not, as contemplated by the testatrix, the first, second, or third chaplain ever became a priest and thus able to comply with her request to the "Father chaplain" to celebrate sixty masses annually (R. 33). The fourth chaplain was Fernando Maniquis, a great great great grandson of the testatrix, and at the time of his appointment in 1890 he was twenty years of age, and served as such chaplain for seven years, and then resigned or renounced (R. 35). He subsequently married (R. 135-6). The fifth and latest chaplain was Angel Gonzalez, likewise a great great great grandson of the testatrix. He was

eighteen years and ten months of age at the time of his appointment in 1901; he served nine years and six months, and resigned or renounced the chaplaincy on December 6, 1910 (R. 35). It has been vacant ever since. This fifth chaplain, who is the father of the infant plaintiff, had evidently been studying for the priesthood (R. 99, 103-4), but in 1909 he left the seminary without leave (pp. 103-104), married (R. 36), must, therefore, have abandoned all intention of ever becoming a priest, and is now the father of three children of whom the infant plaintiff is the eldest (R. 135). The plaintiff was born in 1912 (R. 36), and when presented to the defendant Archbishop of Manila for appointment as a chaplain was only in his tenth year of age, and was in his fourteenth year, that is thirteen years and four months old, at the time of the trial in the Court of First Instance on January 27, 1926 (R. 149, 133).

While the record does not disclose whether or not each of the five chaplains was at the time of his appointment to the chaplaincy in question studying for the priesthood, it tends to prove that the fourth and fifth chaplains did study for the priesthood while serving as chaplains (R. 99, 103-4, 137); and that, although the fourth chaplain, Fernando Maniquis, had not been "tonsured" as a cleric when he was appointed (R. 145), he was tonsured later during his service as chaplain (R. 137). As to the fifth or latest chaplain, who is the father of the infant plaintiff, the evidence establishes that he must have been represented as tonsured or about to be tonsured contemporaneously with his appointment as chaplain, for he was then referred to as "being a *tonsurista*" (R. 99); that he was appointed chaplain by the then Archbishop of Manila as "the *tonsurista* Mr. Angel

Gonzalez y de Guzman" (R. 101), and that he "studied for the priesthood in the seminary of Manila, without finishing it" (R. 64, 103-4). The meaning of the term "tonsured" will be found in the appendix (pp. 9, 50) and, briefly stated, in the Roman Catholic Church it is an outward mark or symbol of dedication to study for the priesthood.

As respects the plaintiff, the present candidate for the office of chaplain, the record shows a striking lack of general as well as ecclesiastical fitness and qualification. There was some testimony of doubtful probative value that the prior chaplains when appointed were only required to know the "Christian Doctrine" (R. 138-9, 147, 249); but what was meant by or embraced within this term was not proved, and the record and opinions below are a blank upon this point. We are hence remitted to authoritative Roman Catholic and other ecclesiastical works for a definition or explanation of the term (see App. 3, 48-50, 52, 53).

But whatever the Christian Doctrine was and is, or whatever the witness may have conceived it to be, there was not a scintilla of evidence that when the infant plaintiff was presented to the Archbishop of Manila for appointment to the vacant chaplaincy at the age of ten years, he had the slightest idea of any such doctrine, or that he was otherwise qualified for appointment as a Roman Catholic collative chaplain. Even as late as the trial, when he was in his fourteenth year, he was not shown to be studying for the priesthood, or to have any knowledge of Latin or of any foreign language, or of the doctrines of the Roman Catholic Church, or any vocation for the priesthood. It is stated in plaintiff's brief (p. 9), that "it was found below that plaintiff possesses 'more learning and intelligence than any previous chaplain at the time of his appointment' (R., p. 373)." There was, on the contrary, no

such finding. The reference by counsel is not to any finding below, but merely to a statement by Mr. Justice Johns in his dissenting opinion. The basis for this statement of the learned justice is not given, but the only testimony to which it could refer is that of Fernando Maniquis (R. 139, 147), the fourth chaplain, born in 1870 (R. 35), whose testimony in this regard, as to the relative qualifications of plaintiff, and the first three chaplains, appointed in 1820, 1838 and 1867, respectively (R. 35)—all before witness' own birth—was ordered stricken from the record as hearsay (R. 148). As matter of fact, the testimony of the infant plaintiff himself exhibited a total absence of qualification for any ecclesiastical office, and was little short of pitiful. The part of his testimony as quoted in the opinion or decision of the trial court (R. 251) does not present a true or fair picture, and it does not set forth the most material and illuminating context. The entire testimony of this infant plaintiff, to which attention is urgently directed, shows his immaturity of mind and lack of ordinary intelligence for his age (R. 149-152), and it is, therefore, printed in the appendix to this brief in full for readier reference by the court (App. 56).

On February 25, 1922, the President of the San Juan de Letran College of the City of Manila, Father Prieto, in his capacity as patron of the chaplaincy, presented the infant plaintiff to the defendant Archbishop of Manila for appointment to the chaplaincy (R. 36, 58), but said patron testified at the trial that in so presenting the plaintiff (R. 211-12)—

> "I did not take into account the moral and intellectual qualifications of Raul Gonzalez because I was told that he was a boy eight years of age. The boy was not presented to me, but as I knew that I was the

patron of this chaplaincy I deemed it my duty to inform the Archbishop stating that Attorney Javier Gonzalez had shown me a family tree from which it appeared that the boy Raul Rogerio Gonzalez was the only legitimate heir to this chaplaincy and it was in this sense that I wrote the letter introducing to the Archbishop the boy Raul Rogerio Gonzalez, heir to the chaplaincy. In this sense must the letter of introduction to the Archbishop be interpreted."

There are exhibits annexed to the complaint (R. 62-66) which certify that in the opinion of the writers the infant plaintiff had the spiritual inclination, vocation and aptitude for the career of priesthood. These opinions, it is submitted, cannot under any sound theory oust or control the duty and discretion of the Archbishop, or be considered as legal evidence of qualification in opposition to or contradiction of his judgment.

The defendant Archbishop denied the application for the appointment of the plaintiff to the chaplaincy, and thereupon, under date of March 20, 1922, notified the plaintiff's father, who had been the fifth chaplain, in writing, as follows (R. 59-60):

"I have studied the case of the chaplaincy for which you apply for your son Raul Gonzalez y Gonzalez, and asked the opinion of persons well versed on the matter. After making the best effort for elucidating the point as to the capacity of the proposed candidate for the enjoyment of the chaplaincy founded by Mrs. Petronila de Guzman, I have arrived at the conclusion that the boy Raul Gonzalez has not at present the qualifications required for chaplain of the said chaplaincy.

"The grounds of my conclusion are the very canons of the new Code of Canon Law. Among others, I can mention canon 1442, which says: 'Simple chaplaincies or benefices are conferred upon clergymen of the secular clergy,' in connection with canon 108, paragraph 1, 'Clergymen are those already initiated in the first tonsure' and canon 976, paragraph 1, 'No one can be promoted to first tonsure before he has begun the course in theology'.

"In view of the Canon as above mentioned, and other reasons which may be adduced, I believe that the boy, Raul Gonzalez, is not legally (ecclesiastically speaking) capacitated to the enjoyment of a chaplaincy.

"Hoping that I have explained myself clearly, I remain," etc.

The Archbishop testified that it was against the laws of the Roman Catholic Church to appoint a young man as chaplain who had not studied enough and who had not become a cleric (R. 113); that an offer had been made to defray the expenses of the infant plaintiff's education even before he entered a seminary; that he was agreeable to admitting him to the seminary, and that when he had the necessary qualifications "to appointing him immediately chaplain of this chaplaincy" (R. 113, 120, 121, 123). His Grace further testified that the masses provided for in the will of the testatrix had been duly said and paid for, to his personal knowledge (R. 111-2, 115, 116, 118, 130); that after paying the stipends for masses, all the surplus income derived from the property of the vacant chaplaincy had been actually used for pious purposes, namely, education; that in this respect he had followed the established custom of his

predecessor in office (R. 111-12); that he had submitted this custom to the Holy See for its approval (R. 113); that the Holy See had approved the custom (R. 114), and that ordinarily chaplaincies are governed by the Canon Law (R. 119). Reference was made by His Grace in his testimony to a document received from Rome as to the application of funds of chaplaincies (R. 119). This was evidently the document identified later by him as signed by Cardinal C. de Lai, Secretary of the Consistorial Congregation, which is the immediate authority over and governs all the bishops of the world "and the matters relative to their dioceses in the name of the Holy Father" (R. 127). The document (R. 98) certifies the decree and authority of the Holy Father that after "maintaining in force the obligation to pay the annual charges of masses ordered in the foundation, benignly conferred upon the supplicant Right Reverend Archbishop the authority to use during fifteen years the residue of the incomes in favor of the seminary and other pious matters according to his conscience and will, any other thing to the contrary, notwithstanding".

The stipulation of facts sets forth in paragraphs nine and ten as follows (R. 36):

> "9. That according to the new canon law promulgated in the year 1918, 'las capellanias o benificios simples se confieren a clerigos del clero secular'; that in order to be a 'clerigo' one must have 'prima tonsura'; that in order to have 'prima tonsura' one must have begun the study of theology; and that in order to study theology one must be a 'bachiller'.*

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* There is no direct translation in the record of the Spanish used in paragraph 9, but the translation of *las capellanias o benificios simples se confieren a clerigos del clero secular* as found in the concurring opinion of Malcolm, J., is as follows (R. 346): "The chaplaincies or simple benefices are conferred on clericals of the secular clergy."

"10. That none of the five chaplains above mentioned was a 'clerigo' at the time of his appointment as such to the chaplaincy in question."

This latter stipulation (10) does not, of course, imply or show that the prior chaplains did not become "clerigos" subsequently while serving as chaplains and probably studying for the priesthood, nor does it imply that they were, at the time of their appointment in any way disqualified from immediately becoming "clerigos" and did not contemplate doing so. As above stated (p. 11), the record shows that two of them were ultimately "tonsured".

The Canon Law referred to in the stipulation of facts and in the testimony of the Archbishop, is contained in the Codex Juris Canonici, which was duly adopted by the Roman Catholic authorities at Rome in 1917, and promulgated and published in Latin in 1918. Professor Wigmore in his recent monumental and interesting work entitled "A Panorama of the World's Legal Systems" (vol. iii, p. 966) says: "This work, unlike the old Corpus Juris Canonici (with its Decretum, Decretalia, and Supplements), is not a compilation, but a genuine codification,—one of the modern world's greatest masterpieces of composition." The original Latin version of its applicable or relevant provisions is set forth in the stipulation of facts (R. 37-41), and a translation thereof is found in the record as Exhibit 2 (R. 92-97). Some of these are the provisions which it is contended are a violation of the plaintiff's rights under the Treaty of Paris of December 10, 1898 (30 Stat. 1754) and the Philippine Organic Act (32 Stat. 691), and which it is further claimed constitute a law impairing the obligation of the contract creating the collative chaplaincy in question. Such impairment, it is alleged, violates the constitutional rights

of the plaintiff under the said Treaty, Organic Act and the Constitution of the United States. It is not contended that the action of the defendant Roman Catholic Archbishop of Manila in declining to appoint the infant plaintiff as a collative chaplain was arbitrary or was not in due conformity with his ecclesiastical duty under the Codex Juris Canonici and the rules, discipline and governance of the Church in force in 1922.

The material provisions of the Codex Juris Canonici as set forth in the record (R. 37) and the agreed translation (R. 92) may be summarized as follows (the term "ordinary" means a bishop):

Only baptized males may validly receive ordination (sacram ordinationem), and they must have the necessary qualification *in the opinion of the ordinary* (Canon 968); the ordinary "has *the right to judge* whether a person presented is fit or not" (Can. 1464, par. 1); the ordinary *is not bound to state to the patron the reasons* why he cannot admit the person presented (par. 3); attendance at seminaries and studies of students for the priesthood are prescribed (Can. 1354, 1364); if the ordinary finds that the person presented is not fit, the patron or the one presented should, within ten days from notice to him of the rejection, file an appeal *to the Apostolic See from the judgment of the ordinary* (Can. 1465, par. 1); if no presentation is made within four months (Can. 1457, see R. 93) the chaplaincy is for the time being one of free collation of the ordinary (Can. 1458, par. 1); the person presented is only entitled to canonical appointment "after *the presentation is admitted*" (but not before; Can. 1466, par. 1); surplus income of the chaplaincy after deducting the expenses of the acting chaplain must one-half be added to the endowment or capital and one-half to the repair of the church and sacristy "unless

there is the custom of using the whole for some good common to the diocese" (Can. 1481); the necessary forum of cases relating to any *benefice* is "before the ordinary of the place of the benefice" (Can. 1560, par. 2), and in "cases relative to inheritance or pious legacies" the necessary forum is "before the ordinary of the place of the testator" (*ib.*, par. 4).

There are other relevant Canons (Nos. 108, 976 and 1442), cited by the Archbishop (R. 59-60), which are quoted in the appendix at pages 10 and 12.

There was no proof of any appeal to the Apostolic See as required by Canon 1465, par. 1, and the defendant Archbishop duly contended that such failure barred the infant plaintiff's suit or proceeding for a mandamus, but the trial court held such appeal to be unnecessary because in its view it would have been futile (R. 274), and the petitioner so urges in this court (brief, pp. 25-6). That such an appeal was requisite is shown *infra*, at page 45.

The plaintiff's brief concedes as matter of fact (p. 9) that he does not possess the qualifications required by the Code of Canon Law of 1917 and contends (p. 21) that "under the will and the deed of foundation it was sufficient that the candidate should be qualified ultimately to become a priest", without, however, pointing to any legal evidence in the record of any such present qualification or suggesting that a civil court and not the Archbishop of Manila was authorized to determine whether plaintiff was or was not "qualified ultimately to become a priest". It is then stated in such brief (p. 18) that "the plenary power of ecclesiastical authority is limited to matters ecclesiastical and spiritual". But certainly the appointment of a collative chaplain who "should be qualified ultimately to become a priest" (p. 21) must needs be essentially an ecclesiastical

and spiritual function, as must likewise be the management of property which was duly in 1820 "segregated from temporal properties and transferred to the spiritual properties of this Archbishopric" (R. 53), and thereupon expressly converted "into spiritual property of a perpetual character subject to the ecclesiastical forum and jurisdiction".

Whilst the proof in the record, aside from the excerpt from Alcubilla, quoted *supra* (p. 6), is not particularly definite as to what the Canon Law and the custom and discipline or governance of the Roman Catholic Church as to appointment and required qualifications for the office of a collative chaplain were in 1820 and prior to 1918, when the present Codex Juris Canonici was promulgated as aforesaid, except that knowledge of Christian Doctrine was required, it is proper to assume that the appointment was always in the discretion of the bishop and that there must, of course, have then been some qualification for appointment as a collative chaplain of the Roman Catholic Church; that the testatrix expressly requested that the chaplain himself should say the masses, which necessarily implied that he would become a duly ordained priest; that at least two of the five chaplains were shown to have been tonsured as above explained, and that the determination of the qualifications of a Roman Catholic collative chaplain were at all times clearly matters within the discipline and governance of the Roman Catholic Church and the jurisdiction of the Archbishop of Manila. The requirements for appointment to a collative chaplaincy prior to 1917 will fully appear by reference to the authoritative works cited and quoted in the appendix to this brief, which it is believed may properly be consulted by the court.

An attempt was made on the trial to establish that certain insurance moneys resulting from a fire which destroyed the building belonging to the chaplaincy had been misappropriated or diverted to unauthorized uses (R. 170, 171, 179), but this claim was refuted; as a matter of fact, the building was rebuilt by the Church out of the insurance money (R. 191-2), and, while there was no income from the property, the Archbishop nevertheless provided for the support of the chaplain (R. 163-4).

Finally, it was complained of as a grievance and wrong to the plaintiff that the defendant had registered the title to the property in the name of the corporation sole "The Roman Catholic Archbishop of Manila" as owner in fee simple (R. 67-8); but this was done under the order of a competent court of exclusive jurisdiction in such matters (R. 157), and His Grace testified that he acknowledged that the property belonged to the chaplaincy in question and that "there is no question about that" (R. 131). This step was undoubtedly taken to simplify the record title in conformity with the public policy and principle of the Torrens Title System in force in many of our States and in other countries, and introduced into the Philippine Islands in order to aid progress by insuring the people "clear documentary titles" (W. Cameron Forbes, The Philippine Islands (1928), vol. i, p. 315; Act No. 496, Philippine Commission, Nov. 6, 1902) and with no adverse bearing or intention whatever on the continuation of the trust. The cases cited in plaintiff's brief (at p. 15), as holding that the registration should have been in the name of the "capellania" itself, as a juristic person, merely hold that a "capellania" has juristic personality and is capable of having property registered in its name, but do not hold that the registration must be in the

name of the "capellania" where, as here, a collative chaplaincy is concerned, and the legal title to the property in question has been duly vested in the Archbishop. The decree of registration is conclusive only as to such legal title, and leaves equitable rights and obligations unaffected (*Severino* v. *Severino*, 44 Phil. Rep. 343, 354-6, cited in plaintiff's brief at p. 23). There is no reasonable ground for challenging the good faith and integrity of the action of the defendant Archbishop in applying to a court of competent jurisdiction, presumably with full disclosure (R. 157), for leave to register spiritual property of the Church under a fee simple title in the name of the Archbishop as a corporation sole. Nor is there any ground whatever for charging that this was a breach or renunciation of the trust, or in any sense a wrong done to the plaintiff or anyone else, or an attempt to divert the trust estate to unauthorized or improper uses.

There are a number of statements in the opinion of the trial court which are inaccurate and misleading. Thus, it is stated (R. 256) that the defendant Archbishop "claims to be the absolute owner of the property". As a matter of fact, he has made no such unqualified claim, but, as above shown, has acknowledged that the property belonged to the chaplaincy (R. 131). Later in the opinion (R. 274), the attitude of the Holy See in this matter is misconstrued in the statement that "His Holiness exonerated defendant Archbishop of Manila in his failure to fulfill faithfully the will of the foundress of this chaplaincy with regard to the saying of the masses and assumed to authorize him to spend the income of this chaplaincy according to his conscience and will". In support of this statement, the trial court referred to Exhibits 4 and 5. There is no Exhibit 5 in the

record, or at least nothing so identified; but Exhibit 4, which is the ruling of the Holy Father under date of July 3, 1925, already quoted, *supra*, p. 16, is as follows (R. 98-9): "and maintaining in force the obligation to pay the annual charges of masses ordered in the foundation, benignly conferred upon the supplicant Right Reverend Archbishop the authority to use during fifteen years the residue of the incomes in favor of the seminary and other pious matters according to his conscience and will, any other thing to the contrary, notwithstanding." Because of this ruling of the Papacy, as so misconstrued, the learned judge expresses the opinion "that it would be unjust to require plaintiff to undergo the trouble and expense of appealing to the Pope at Rome in view of the said letter" and that "such an appeal by plaintiff would have been a useless proceeding. The law does not require a vain and useless act to be performed" (R. 274), and the plaintiff now so contends (Brief, point III, p. 25).

The judgment of the Court of First Instance of Manila (*i.e.*, the court of original jurisdiction) ordered "the defendant . . . as a corporation sole, and His Grace Michel J. O'Dougherty Roman Catholic Apostolic Archbishop of Manila, its sole representative, forthwith to appoint plaintiff Raul Rogerio Gonzales, as chaplain of the said chaplaincy founded by Doña Petronila de Guzman" (R. 293); to pay to the plaintiff 173,725 pesos "as the rents and income of the property of said chaplaincy from January 1, 1911, to December 31, 1925" (*i. e.*, from a date prior to the birth of the plaintiff), less certain deductions, "and furthermore, from the date of plaintiff's appointment as chaplain, to pay the said plaintiff through his guardian or guardian *ad litem*, the net income of said property from time to time as collected" and "pending the final ter-

mination of the action, to allow and pay to plaintiff out of the accumulated funds of the chaplaincy of Petronila de Guzman for his maintenance, education and legal expenses a pension of 1,000 pesos a month" (R. 294). The Supreme Court of the Philippine Islands (R. 397-8) reversed the above mentioned judgment of the Court of First Instance of Manila, principally on the authority of *Watson* v. *Jones,* 13 Wall. 679, *infra,* and decreed that the defendant The Roman Catholic Archbishop of Manila be "absolved from the complaint", etc. (R. 398).

The gist of the opinion of the court below will be found at pages 334-338 of the record and particularly in the following paragraph (R. 337):

> "The trial court appears to have been of the opinion that the new canon of 1918 cannot be given effect as regards the chaplaincy in question for the reason that to do so would impair the obligation of the trust involved in the acceptance by the Archbishop of the provisions for the establishment of the chaplaincy, with the result of impairing the obligation of a contract in violation of our Organic Act. This idea is in our opinion fallacious. It is undeniable that under Spanish law an ecclesiastical canon such as we are now considering could have been adopted regardless of its effect upon the foundation or the persons interested therein, and it cannot be admitted that an obligation which could be changed under Spanish law has become immutable from the promulgation by Congress of the constitutional provision forbidding the impairment of contracts by legislative Acts. Under said constitutional provision obligations are to be respected as they stand, and it was not intended that, by virtue of this provision, obligations should be made more onerous to either

party. If the proposition maintained by the plaintiff's attorneys be true, then we are confronted with the spectacle of a chaplaincy which is a perpetual sinecure for a chaplain without ecclesiastical qualifications. Perpetuities of any sort are objectionable, but one of this character would be intolerable. As is justly said by the attorney for the appellant, 'it is unthinkable that qualifications for chaplain should remain stagnant and the same forever'. In passing upon a question of this character the court is not at liberty to ignore the effects upon human society which would result from adopting the proposition upon which the case for the plaintiff here rests."

The concurring opinion of Mr. Justice Malcolm, among other things, said (R. 344-5; 352-3):

"The Supreme Court of Spain has held that properties aggregated to a chaplaincy with the approval of the competent ecclesiastical authority became spiritualized, and form an integral part of its endowment (*Sentencia del Tribunal Supremo,* June 1, 1863, 8 *Jurisprudencia Civil,* p. 364).

"When the endowment was created, there existed a unity of Church and State in the Philippines. The change to American sovereignty caused the complete separation of Church and State. All special privileges of the Roman Catholic Church were abolished. But the property of the Church was protected since in the Treaty of Paris it was declared that the relinquishment or cession of the Philippine Islands 'cannot in any respect impair the property or rights which by law belong to the peaceful possession of property of all kinds of . . . ecclesiastical or civil bodies'."

"The parties seem much concerned with worldly considerations, with obtaining control of the tidy sum involved. Yet if we would place ourselves in the position of the elderly lady who conceived the foundation, it would be realized that what she desired was the saying of masses for pious purposes by a descendant, and so instituted a foundation to attain that purpose. The wishes of the foundress of the spiritual trust should govern and will rather be subserved than thwarted by the application of the Canon Law of 1918 to the trust.

"It is not for the courts to exercise control over the dignitaries of the Roman Catholic Church in the performance of their discretionary and official duties. Rather is it for the applicant to conform to just church regulations. The courts should ponder long before compelling the defendant Archbishop of Manila to appoint a particular person to a chaplaincy, in contravention of the mandatory provisions of existing canon law.

"The all controlling considerations in the disposition of this case are the intention of the foundress of the spiritual trust, which should be respected, and the impropriety of the courts invading the religious realm and their attempting to order things to be done, the performance of which appertain exclusively to the regularly constituted authorities of the Roman Catholic Church.

"Premises conceded, the issue should be resolved by holding that the court will not sanction the expedition of a writ of mandamus, directed to the Roman Catholic Archbishop of Manila, reversing him in his decision to apply the Canon Law of 1918 to the foundation."

The plaintiff's brief concludes by urging the court to adjudge that he is entitled "to be instituted as chaplain, but without sacerdotal functions until he is qualified to perform them, and to be paid the accumulated income" (p. 31); but adds that "if this court considers that *mandamus* should not issue to require plaintiff's induction as chaplain, but that he is entitled to the income of the foundation this relief might be afforded by affirming only so much of the decision of the Court of First Instance as awards a money judgment". Thus, in the absence of any proof whatever of the most primary qualification for the priesthood, this court is urged to award a money judgment for the full amount of the "accumulated income" of the spiritual property in question, which has not been accumulated at all, but expended, primarily, in duly carrying out the wishes of the foundress as to the saying of masses and secondarily in applying the surplus to proper pious uses, as testified to uncontradictedly by the defendant Roman Catholic Archbishop of Manila (R. 111-12).

There are instances of errors and omissions of fact in plaintiff's brief which must be corrected.

Thus, at page 4 of plaintiff's brief, it is stated that "There is no substantial issue or question of fact in the case." This is inaccurate both as respects plaintiff's general qualifications, as to the purpose and intent of the testatrix, as to the qualifications of the prior chaplains, as to the purpose and intent with which the defendant registered title to the property of the chaplaincy in question, as to observance of the trust, and as to inferences or conclusions to be drawn from the evidence.

At page 5, plaintiff's brief quotes part of a sentence from the executor's deed of 1820, but omits the context and remaining part thereof, which speaks of the purpose of the

deed as being "that by virtue of this Deed of Foundation canonical collation may be conferred on the said appointed chaplain" (R. 320).

At page 6, plaintiff's brief quotes from the decree of approval of the chaplaincy by the Archbishop in 1820, but omits the obviously controlling part that follows, viz., "converting said sum into spiritual property of a perpetual character subject to the ecclesiastical forum and jurisdiction" (R. 57).

On the same page, the brief quotes what purports to be the instrument embodying the appointment to office of the fifth chaplain in 1901, but omits the first part of the document, which relevantly recites the qualifications of the applicant! Such omitted part reads as follows:

> "Now, therefore, the necessary requisites and qualifications according to law being found concurring in D. Angel Gonzalez y Guzman, tonsured, a boarding student in the College of San Juan de Letran of this City" (R. 322).

At page 8, it is stated that since 1910 "the defendant has applied the income to other purposes (Rec., p. 324)" but the reference to the record shows that "all of the income thus received less the expenses of administration *and cost of the masses,* has been applied to the purposes of education, beneficence and charity under the directions of the Archbishop, with the approval of His Holiness, the Pope".

It is further stated by plaintiff, on said page 8, that "prior to 1918, the only relevant requirement was one of age"; but this is contrary even to the testimony of plaintiff's own witness (R. 138-9).

On page 13 is the assertion that the intention of the testatrix as construed by plaintiff "was clear and beyond

question," when the plaintiff's construction is neither clear nor beyond question but as matter of fact disputed. Again and similarly, on page 14, is the assertion that "the facts above outlined are undisputed"!

It is further requisite that attention should be called to the fact that similar grave inaccuracies and omissions in respect of essential and material facts occur in the petition for the writ of certiorari, notwithstanding the repeated admonitions of the court as to the necessity for "studied accuracy". *Erie R. R.* v. *Kirkendall,* 266 U. S. 185; *Furness, Withy & Co.* v. *Yang-Tsze Ins. Ass'n,* 242 U. S. 430, 434.

Thus, on page 4 there is the statement that the income of the chaplaincy "has been applied by the defendant to other purposes", when as matter of fact the proof clearly shows that the masses have been said to the personal knowledge of the Archbishop of Manila and the surplus has been applied to pious uses in aiding the parochial schools within the Archdiocese (R. 111-2, 115-6, 118, 126, 130). On the same page of the petition there is the categorical statement that "prior to 1918 the only relevant requirement was one of age", when as matter of fact the plaintiff's own witness testified that there was the requirement of knowledge of the Christian Doctrine (R. 138-9, 147, quoted at 249). It is then stated on page 5 of the petition that it is "undisputed . . . that plaintiff possesses 'more learning and intelligence than any previous chaplain at the time of his appointment' ", when as a matter of fact no such proof appears in the record as above explained, and there is nothing in the whole history of the case to warrant the statement that the alleged fact is "undisputed". There is on page 6 the statement that the reversal by the Supreme Court of the Philippine Islands "leaves the defendant free to

proceed with this diversion of trust funds which has continued for the past eighteen years", when there has been no diversion at all, because, to repeat, the proof shows uncontradictedly the saying of the sixty masses and the application of the surplus net income to pious uses (R. 111-2, 116, 118, 130).

CONTENTIONS OF DEFENDANT.

On behalf of the defendant, The Roman Catholic Archbishop of Manila, it is contended that the judgment of the Supreme Court of the Philippine Islands, absolving him from the complaint and reversing the judgment of the trial court, was right and should be affirmed upon the following grounds discussed in the points hereinafter argued, viz.:

1. That the Roman Catholic Church is entitled through its representative the defendant, Roman Catholic Apostolic Archbishop of Manila, to exercise exclusive jurisdiction over the subject of the qualifications and appointment of collative chaplains and the administration and disbursement of funds arising from the rentals and income of property of a collative chaplaincy, which was expressly converted in 1820 "into spiritual property of a perpetual character subject to the ecclesiastical forum and jurisdiction" (R. 57).

2. That the testatrix Doña Petronila de Guzman in and by her last will and testament did not create or vest any heritable right in her descendants to appointment to the chaplaincy in question in succession to her great grandson Esteban de Guzman whom she designated as the first chaplain, irrespective of ecclesiastical qualifications, and did not create and vest any heritable property right in her descendants to any surplus that might in the future possibly arise over and above the expense of having sixty masses

per annum said for the repose of the souls of herself and certain named relatives and the sustenance of any acting chaplain.

3. That the infant plaintiff was not qualified to be appointed a collative chaplain of the Roman Catholic Church under its rules and discipline whether before or after the codification in 1917 of the Canon Law.

4. That after fully providing for the perpetual trust assumed on behalf of the Roman Catholic Church, that is to say, the saying of sixty masses per annum according to its custom and practice, the Church was authorized and bound to apply the surplus to other pious uses during the continuance of any vacancy in the chaplaincy.

5. That no treaty or constitutional right of the infant plaintiff was violated and the obligation of no contract whatever was impaired by the refusal of the defendant Archbishop to appoint him as a collative chaplain of the Roman Catholic Church.

IMPORTANCE OF QUESTIONS PRESENTED.

The importance of the issues involved in the case at bar, so far as they affect the governance and independence of the Roman Catholic Church, if not, indeed, of all Churches, whether Catholic, Protestant, or Jewish, cannot be exaggerated. In the Philippine Islands alone there are about one hundred and ninety Roman Catholic collative chaplaincies (R. 131), and there are undoubtedly many thousand like chaplaincies throughout the world created during the centuries of the existence of the Roman Catholic Church. A ruling by this court that appointment to a collative chaplaincy and use of surplus funds arising from its spiritual property are heritable as property rights vested in the sev-

eral families of the founders and subject to the jurisdiction and control of the civil courts and not of the ecclesiastical tribunals of the Church more than a century after the foundation of a chaplaincy, would have very far-reaching consequences, as recognized by Mr. Justice Street writing for the court below in the above quotation.

In the present case, there has been no arbitrary treatment of the infant plaintiff, or of any one else, and no perversion or denial of any obligation or trust assumed by the representatives of the Roman Catholic Church. It admits its duties under the trust. The trust created by the testatrix and accepted by the Church one hundred and nine years ago and all obligations thereunder are not in any sense challenged or denied; the masses for which she piously and reverently provided are being and have always been said; the defendant even offered to appoint the plaintiff immediately as chaplain if and when duly qualified, according to the discipline, rules and laws of the Roman Catholic Church, to occupy an ecclesiastical office and administer ecclesiastical or spiritual property. The property of the chaplaincy has been since 1820 indisputably "segregated from temporal properties and transferred to the spiritual properties of this Archbishopric" (R. 53), and was thereupon constituted "spiritual property of a perpetual character subject to the ecclesiastical forum and jurisdiction" (R. 57). For a civil court now to assume jurisdiction and compel the appointment by writ of mandamus of such an unqualified person as the plaintiff by his own testimony was shown to be and order the defendant to treat surplus income from its spiritual property as heritable in the families of the founders of collative chaplaincies would establish a patently unsound precedent fraught with incalculable mis-

chief and prejudice to the just and immemorial rights and discipline of the Roman Catholic Church.

There is no claim in the case at bar by the respondent that the Roman Catholic Church could repudiate obligations duly assumed by it under a will or deed of foundation, or that it would be at liberty with respect to the present foundation to change or vary the express terms of the will, or to apply all the income to other purposes than the saying of at least sixty masses annually and, if a surplus then remained, other pious uses. If the Roman Catholic Archbishop should ever repudiate such a trust obligation and divert the fund to unauthorized purposes, a different question would then be presented as to whether a court of equity at the suit of the Attorney General might in a proper case invoke civil jurisdiction to enforce the trust obligation assumed by the Church in 1820.

Much is said in petitioner's brief of the alleged civil wrong done to him by the codification of 1917 in making a change with respect to the introduction of tonsure as a prerequisite for the holding of a chaplaincy. As appears in the appendix to this brief (pp. 27, 30, 33, 38, 42), this requirement was not, in fact, an innovation of 1917, but had existed long prior to that date. If, however, it be assumed for the purposes of the argument and disposition of this case that in the codification of the Canon Law in 1917, a change was made in the qualifications for chaplains, viz., that the candidate should have shown before appointment some vocation for the priesthood by having become a *clericus* or clerical and having been tonsured as a symbol of such intention and vocation, it is, nevertheless, insisted that such an amendment of the Canon Law would be entirely within the rights and powers of the Church and not subject to re-

view and control in a civil court. With the progress of civilization, education and culture, and in the light of experience, the Roman Catholic Church may, of course, be reasonably and naturally called upon to prescribe improvements in the qualifications of its chaplains, and is not bound to adhere to the laws and practices of by-gone ages (see App. 47-48; *Lewis* v. *Gaillard*, 61 Fla. 819, 842-3; *Russie* v. *Brazzell*, 128 Mo. 93, 107; *Lamb* v. *Cain*, 129 Ind. 486, 514); and the qualifications of its chaplains under pious collative foundations ought to be determined by the appointing bishop according to the rules of discipline of the Church and the Canon Law existing and in force at the time of any appointment to a chaplaincy. It is surely not reasonable to require the creation of different classes of chaplains in the spiritual domain of the Roman Catholic Church graduated according to the qualifications existing at the dates of the creation of particular foundations for pious uses and not according to the qualifications in force at the time of appointment or ordination and service; and it is inconceivable that the pious foundress of this chaplaincy intended otherwise.

The sole relevant questions, in final analysis, are whether a civil court of the United States has jurisdiction of such a controversy on the alleged ground that the Roman Catholic Church could not change any of its ecclesiastical requirements and qualifications for appointment to a Roman Catholic chaplaincy from those existing in 1820; whether any civil right, treaty, or constitutional provision, has been violated by the codification of the Canon Law made in 1917; whether the civil courts of the United States have judicial power to mandamus a Roman Catholic Archbishop and command and compel him to appoint as a chaplain of the Church a particular person who is indisputably not qualified

by its laws and discipline, and, finally, whether the plaintiff who has never been or served, or been qualified to serve, as a chaplain, by any standard ever in force, either before or after 1917, nevertheless has a civil property right to all the net or surplus income of this collative chaplaincy accruing since a date before his birth on some notion or theory of inheritance from the testatrix arising under civil law, and remediable as such in a civil court.

POINTS.

I.

AS TO THE JURISDICTION OF A CIVIL COURT OF THE UNITED STATES OVER THE PRESENT CONTROVERSY BETWEEN THE INFANT PLAINTIFF AND THE DEFENDANT ROMAN CATHOLIC ARCHBISHOP OF MANILA.

It has already been shown that the property of the chaplaincy in question was dedicated and constituted by the testatrix "into a collative chaplaincy" of the Roman Catholic Church (R. 33, ninth item of will) and that it became in 1820 spiritual property "subject to the ecclesiastical forum and jurisdiction" (R. 57). Although she designated as the first chaplain her great grandson, then an infant of the age of ten years, she undoubtedly contemplated that he would become a priest, probably before her death, for she requested "the Father chaplain to celebrate sixty masses annually", but provided for administration, in case of the contingency that he might still be an infant and, therefore, not a priest at the time of her death (R. 33-34).

The plaintiff's theory of a civil right enforcible in the secular courts is entirely contradictory to the clear and expressed intention of the testatrix herself; for it is indisputable that she was a devout member of the Roman Catholic Church (R. 33), and intended to establish a "col-

lative chaplaincy'' with all that the term implied and to have it subject to the laws and jurisdiction of that Church (R. 33). It is likewise indisputable that the deed of foundation executed by her executor expressly segregated and transferred the property of the chaplaincy ''to the spiritual properties of this Archbishopric" in the broadest possible terms and "renounces with all solemnity the laws that may favor the said decedent" (R. 53), and equally indisputable that the decree of approval executed by the Metropolitan Archbishop accepted and approved the foundation of the chaplaincy in the will and deed of foundation and thereby expressly converted the agreed value of the property "into spiritual property of a perpetual character subject to the ecclesiastical forum and jurisdiction" (R. 57). It would be difficult, if not impossible, to devise language more clearly evidencing the intention and purpose of the testatrix, of her executor and of the Roman Catholic Archbishop then in office to remove the property entirely beyond the jurisdiction of the secular courts and to entrust the perpetuation of her wishes solely to the protection of the ''ecclesiastical forum and jurisdiction''.

Mr. Chief Justice Fuller, delivering the unanimous opinion of the court in *Ponce* v. *Roman Catholic Church* (1908), 210 U. S. 296, 318, among other things said:

> ''The corporate existence of the Roman Catholic Church, as well as the position occupied by the Papacy, has always been recognized by the Government of the United States.''

And the Treaty of Paris (30 Stat. 1754) expressly covenanted (Article VIII) that the rights of the Roman Catholic Church would be duly maintained, for it provided:

"that the relinquishment or cession, as the case may be, to which the preceding paragraph refers, cannot in any respect impair the property or rights which by law belong to the peaceful possession of property of all kinds, of provinces, of municipalities, public or private establishments, ecclesiastical or civic bodies, or any other associations having legal capacity to acquire and possess property in the aforesaid territories renounced or ceded, or of private individuals, of whatsoever nationality such individuals may be. . . ."

At the time of this treaty, December 10, 1898 (ratified by the Senate, February 6, 1899), practically all of the civilized native population were adherents of the Roman Catholic Church (W. Cameron Forbes, "The Philippine Islands", vol. i, p. 15).

In 1914 the Supreme Court of the Philippine Islands, the court below, had before it for adjudication a controversy over the income of this very chaplaincy. The controversy was between the latest incumbent, Angel Gonzalez (father of the present plaintiff) and the then Roman Catholic Archbishop of Manila (the predecessor in office of the present defendant). The decision in that case of the Court of First Instance will be found in the record at pages 102-110. The opinion of the Supreme Court of the Philippine Islands, in reviewing said decision of the Court of First Instance, among other things said (*Gonzalez* v. *Harty, Roman Catholic Archbishop of Manila*, 32 Phil. Rep. 328, 337-338):

"Our attention has been invited to the fact that the property affected by the chaplaincy should have been administered by the chaplains and not by the administrators of the Sagrada Mitra, inasmuch as clause 11

of the foundress' will so provided. To refute this assertion, it suffices to say that the provisions of the said will set forth that the first testamentary executor of the estate of the testatrix should act as the administrator of the property during the minority of the first chaplain appointed in that document, Esteban de Guzman. This provision must be understood to be mandatory, except as otherwise provided by the canonical laws and as, pursuant therewith, the chief ecclesiastical authority may order, for, after the latter had accepted the foundation of the chaplaincy, the administration of its property appertains to the authorities established by the Church, pursuant to the latter's own laws, and this rule has been observed since 1863."

In the case of *Evangelista* v. *Ver*, 8 Phil. Rep. 653, 659, the same court declared:

> "It is settled law in the United States that the canons and the rules of a church will be enforced in adjusting property rights growing out of ecclesiastical relations. They enter into the contract and appointment of officers and members in the same manner as do the by-laws of a mercantile association or of a club and, when not in contravention of established law, they will be sustained by the courts (*Watson* v. *Jones*, 80 U. S. 679; *Baxter* v. *McDonnell*, 155 N. Y. 83, p. 93; *Leahey* v. *Williams*, 141 Mass. 345; *Roshi's Appeal*, 69 Pa. 462.)"

See also, to the same effect, *Chase et al.* v. *Cheney*, 58 Ill. 509, 536, where it is said: "The contract (of ministry)

must be construed and enforced, by reference to the canons, which form part of it"; and *Gibbs* v. *Gilead Ecclesiastical Society,* 38 Conn. 153, 166.

In a later case, the Supreme Court of the Philippine Islands again passed upon the question of jurisdiction and of the application of the Canon Law in *United States* v. *Cañete* (1918), 38 Phil. Rep. 253, 260, as follows:

> "It is the established doctrine of the American courts that in matters purely ecclesiastical the decisions of the proper church tribunals are conclusive upon the civil tribunals."

There is the fullest authority in support of these statements of American law both in this court and in the courts of many States.

The leading decision in this court upon the question of church government of spiritual property and the necessity for the freedom of any Church from civil or secular interference or control is the well-known case of *Watson* v. *Jones,* 13 Wall. 679, *et seq.* It was decided at the December 1871 term, and it related to a controversy which had arisen as to the government, discipline and control of a Presbyterian Church in the City of Louisville, State of Kentucky. The opinion of the court was written by Mr. Justice Miller. He discussed the protection which the law under our system of jurisprudence throws around the dedication of "property by way of trust to the purpose of sustaining, supporting, and propagating definite religious doctrines or principles, provided that in doing so they violate no law or morality, and give to the instrument by which their purpose is evidenced, the formalities which the laws require;" he referred to "that full, entire, and practical freedom for all forms of religious

belief and practice which lies at the foundation of our political principles," and added the following pertinent language (at p. 727 *et seq.*), viz.:

> "In this class of cases we think the rule of action which should govern the civil courts, founded in a broad and sound view of the relations of church and state under our system of laws, and supported by a preponderating weight of judicial authority is, that, whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them. . . .
>
> "In this country the full and free right to entertain any religious belief, to practise any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property, and which does not infringe personal rights, is conceded to all. The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect. The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one ag-

grieved by one of their decisions could appeal to the secular courts and have them reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for.

"Nor do we see that justice would be likely to be promoted by submitting those decisions to review in the ordinary judicial tribunals. Each of these large and influential bodies (to mention no others, let reference be had to the Protestant Episcopal, the Methodist Episcopal, and the Presbyterian churches), has a body of constitutional and ecclesiastical law of its own, to be found in their written organic laws, their books of discipline, in their collections of precedents, in their usage and customs, which as to each constitute a system of ecclesiastical law and religious faith that tasks the ablest minds to become familiar with. It is not to be supposed that the judges of the civil courts can be as competent in the ecclesiastical law and religious faith of all these bodies as the ablest men in each are in reference to their own. It would therefore be an appeal from the more learned tribunal in the law which should decide the case, to one which is less so. . . .

"One of the most careful and well-considered judgments on the subject is that of the Court of Appeals of South Carolina, delivered by Chancellor Johnson in the case of *Harmon* v. *Dreher*.* The case turned upon certain rights in the use of the church property claimed by the minister notwithstanding his expulsion from the

* 2 Speer's Equity 87.

synod as one of its members. 'He stands', says the chancellor, 'convicted of the offenses alleged against him, by the sentence of the spiritual body of which he was a voluntary member, and whose proceedings he had bound himself to abide. It belongs not to the civil power to enter into or review the proceedings of a spiritual court. The structure of our government has, for the preservation of civil liberty, rescued the temporal institutions from religious interference. On the other hand, it has secured religious liberty from the invasion of civil authority. The judgments, therefore, of religious associations, bearing on their own members, are not examinable here, and I am not to inquire whether the doctrines attributed to Mr. Dreher were held by him, or whether if held were anti-Lutheran; or whether his conduct was or was not in accordance with the duty he owed to the synod or to his denomination. . . . When a civil right depends upon an ecclesiastical matter, it is the civil court and not the ecclesiastical which is to decide. But the civil tribunal tries the civil right, and no more, taking the ecclesiastical decisions out of which the civil right arises as it finds them.' . . .

"We cannot better close this review of the authorities than in the language of the Supreme Court of Pennsylvania, in the case of the *German Reformed Church* v. *Seibert:* * 'The decisions of ecclesiastical courts, like every other judicial tribunal, are final, as they are the best judges of what constitutes an offence against the word of God and the discipline of the church. Any other than those courts must be incompetent judges of matters of faith, discipline, and doc-

* 3 Barr 291.

trine; and civil courts, if they should be so unwise as to attempt to supervise their judgments on matters which come within their jurisdiction, would only involve themselves in a sea of uncertainty and doubt which would do anything but improve either religion or good morals."

From the time of the decision of this court in *Watson* v. *Jones* in 1872 (December Term 1871), there has never been any challenge or qualification in this court of the doctrine enunciated in that leading case, and it has been repeatedly approved and followed in many States. The question as to the binding and exclusive application of the laws and discipline of the Presbyterian Church in respect of the transfer and administration of property and income belonging to it came again before the court after the lapse of forty-six years in the case of *Shepard* v. *Barkley, Moderator, etc.*, 247 U. S. 1, 2, and it emphatically reaffirmed the rule in *Watson* v. *Jones*, as not open to question, in a memorandum opinion of Mr. Chief Justice White by direction of the court, in which many cases and most instructive examples of the application and scope of the settled doctrine in varying aspects are cited.

That the doctrine of *Watson* v. *Jones* is directly applicable to the present controversy cannot be doubted. That case, as appears *supra*, p. 40, relies upon the "implied consent" of "all who unite themselves to such a body" to submit to the ecclesiastical government. In the case at bar, however, the consent to the ecclesiastical government, which was merely implicit in *Watson* v. *Jones*, is explicit, and there is neither room nor necessity for presumption; for as shown above (p. 36), the deed of foundation and decree of approval of the chaplaincy in the plainest possible language

declared that the property was converted into spiritual property of a perpetual character "subject to the ecclesiastical forum and jurisdiction", and renounced "with all solemnity the laws that may favor the said decedent".

An illustrative example of the propriety of applying the principles of Canon Law in a controversy growing out of ecclesiastical relations, is found in the case of *Jones, Catholic Bishop of Porto Rico* v. *The Registrar of Property,* 18 Porto Rico 124, 126, where the court said:

> "These principles of Canon Law are perfectly applicable to this case for the reason that the question involved is the determination of the rights appertaining to and the relations existing between a nun, a convent and the prelate of the diocese, which are rights and relations which have been fixed by rules issued, in the exercise of its powers to govern its own institutions, by the Roman Catholic Church, the personality of which has been fully recognized by the Supreme Court of the United States . . ."

See also for interesting and striking decisions as to the doctrine of non-interference with Church authorities, the following additional cases: *Baxter* v. *McDonnell,* 155 N. Y. 83, 101; *Connitt et al.* v. *Reformed Protestant Dutch Church of New Prospect et al.,* 54 N. Y. 551, 561; *Walker* v. *Wainwright,* 16 Barb. (N. Y.) 486, 487; *First Presbyterian Church* v. *First Cumberland Presbyterian Church,* 245 Ill. 74, 99; *Fussell* v. *Hail,* 233 Ill. 73, 77; *Wehmer* v. *Fokenga,* 57 Neb. 510, 516; *Holwerda* v. *Hoeksema,* 232 Mich. 648, 652; *Chase* v. *Cheney,* 58 Ill. 509, 536; *O'Donovan* v. *Chatard,* 97 Ind. 421, 429; *White Lick Quarterly Meeting* v. *White Lick Quarterly Meeting,* 89 Ind. 136, 151; *Hackney* v. *Vawter,* 39 Kan. 615, 628.

The courts have likewise held, and the policy of our government of non-interference in religious matters requires, that in any event an appeal to the ecclesiastical authorities for redress must first be taken, if available, before a civil court will intervene. *The State ex rel. McNeill* v. *Bibb Street Church,* 84 Ala. 23, 35-6; *German Reformed Church* v. *Seibert,* 3 Pa. St. 282, 291. Such a right of appeal, as stated *supra* (p. 18), is expressely given by Canon 1465, par. 1 of the Canon Law of 1917 to the plaintiff herein, but the plaintiff has utterly failed to avail of it. The plea of the alleged futility of such an appeal to the Apostolic See, the highest tribunal of the Roman Catholic Church, would, if tenable, have applied in most of the cases cited above. The same argument, that the ecclesiastical tribunal cannot be a judge in its own cause, would have applied (and in fact was urged) in *Watson* v. *Jones* (13 Wall. 679, see p. 707, argument for the appellants), and *Shepard* v. *Barkley, Moderator, etc.* (247 U. S. 1), as well as to all the other cases refusing to take jurisdiction of controversies relating to ecclesiastical officers and the management of spiritual or ecclesiastical property. Necessarily, every Church is more or less interested in the administration and income of its spiritual properties, such as this property was, and if its appellate tribunal is to be excluded because it would be a judge in its own cause, the result would be the complete nullification of the long established rule so emphatically enunciated in the cases cited above.

II.

AS TO THE WILL FOUNDING THE COLLATIVE CHAPLAINCY IN QUESTION, THE DEED OF FOUNDATION AND THE DECREE OF APPROVAL BY THE METROPOLITAN ARCHBISHOP OF THE PHILIPPINE ISLANDS MAY 12, 1820.

A fundamental error in the plaintiff's case, it is submitted, is the assumption that the chaplaincy in question constituted an hereditary property right and that as a descendant of the testatrix, Doña Petronila de Guzman, he had inherited some kind of a property right enforcible in the civil or secular courts and was thereby not only entitled to be appointed a collative chaplain of the Roman Catholic Church but to receive all the net revenues and income of the property of such chaplaincy even though not qualified to be a chaplain under existing canon law. As stated by the court below, the plaintiff's position in that court was as follows (R. 328):

> "Upon turning our attention more directly to the legal aspects of the controversy, we discover that the case of the plaintiff proceeds upon a train of reasoning which may be expressed as follows, namely, that the Archbishop, as representative of the Church, is the holder of the empty legal title to the property on which the chaplaincy is founded; that the beneficial interest thereto is vested exclusively in the heirs of the foundress; that the plaintiff, as her next of kin, has an unqualified right to be appointed to the chaplaincy, without regard to his lack of ecclesiastical qualifications; that the plaintiff, having title to the chaplaincy, is entitled to demand of the defendant the entire net income received by the latter as administrator of the property during the pending vacancy, as well as the right to be paid the income that may hereafter be produced by the property so long as the plaintiff shall

occupy the post of chaplain. In a word, it is the contention of the plaintiff that the foundation in question is a perfected trust, enforcible in a court of equity, that the Archbishop is a mere trustee, and that the plaintiff is the present rightful beneficiary of the entire property."

At this point, it should be noted that, contrary to the statement in plaintiff's brief (p. 20), that "the existence of some outstanding property rights was recognized by the express reservation in the court's decision (R. pp. 340, 341)", the court below merely observed that any action to secure redress for "alleged" improper diversion of the funds of the chaplaincy should be brought as a class suit (R. 340); and further, that it would not interfere with the decision of the trial court reserving to the plaintiff "any legal rights that he may have" with reference to the cancellation of the Torrens certificate, in a proper proceeding before the proper court, observing, however, that if relief should be sought in the direction indicated, the contention would probably in the end resolve itself into the question whether such certificate should be annotated so as to show that the property was held by the defendant subject to the conditions stated in the documents constituting the chaplaincy in question; and it further observed that such proceeding ought also to be brought as a class suit (R. 340), but without holding or intimating, in either connection, in any way whatever that such suits would lie.

There is not the slightest expression or indication in the controlling documents, namely, the will, the deed of foundation and the decree of acceptance (R. 43-58), of any intent on the part of the testatrix to provide that her descendants, other than the great grandson she designated as first chap-

lain, should be entitled to be appointed collative chaplains in the future after the death or inability or default of the said great grandson Esteban de Guzman. She makes no provision whatever for successors to the first chaplain, and it is only in his "default" (y falta de este) that the nearest relative is to be appointed, and in "defect" or "default" (defecto de este) of such a relative, then a collegian (colegial) of San Juan de Letran (R. 275). The translation of these Spanish terms is indisputably "in default of that one" or "in defect of that one". They do not mean "in succession to". Had the testatrix intended to provide for succession and heritable successors to the first chaplain indefinitely for centuries in the future and to vest an heritable right of succession to the chaplaincy and its income in her nearest descendant at the time of any vacancy, she would have had no difficulty in expressing that simple idea and intent in appropriate and plain language. When a carefully drawn and precisely phrased document, such as this will obviously was, designates a certain person to fill an office and in his default names another, this does not mean that such other person is to take as successor. On the contrary, he only takes in the place of and upon the default, that is, the inability or failure to qualify, of the designated first chaplain. By no reasonable construction or stretch of language can "default" be held to refer to the death of the first chaplain after many years of incumbency, or to heritable succession by her descendants during the unlimited future.

In the answer of the defendant in the Court of First Instance, it was duly pleaded as a defense that the will of the testatrix did not provide that the successors to the designated first chaplain should be selected solely from among the nearest relatives (R. 18). It is true that in the Supreme Court of the Philippine Islands, the defendant

relied on other grounds, and did not oppose the contention that the nearest relative *if ecclesiastically qualified* had an ecclesiastical—not a civil—right to preference. The plaintiff, however, is urging upon this court that "the last will of the founder or foundress of a chaplaincy is the supreme law to be observed" (R. 277; plaintiff's brief, p. 16). Yet the will of the foundress in the case at bar in the plainest terms requires a collative chaplaincy, not the mere laical chaplaincy which is, in effect, the result sought for by plaintiff; and her will, moreover, urged as "the supreme law to be observed", fails utterly, as shown above, to make any provision whatever for any heir, except as to the first incumbent, or any provision as to successors. Nevertheless, plaintiff, whose respect for and insistence upon the terms of the will and the governing effect to be given thereto is so great as to lead him to attempt to apply it for the purpose of restricting the Church forever to the qualifications for a collative chaplaincy in effect in 1820—a misapplication of the principle which would defeat, and not further, the testamentary intent—the plaintiff does not hesitate to contend that the clear, precise requirements of the will may after all not govern the case, but that these requirements have been overridden by a so-called practical but unauthorized course of construction, which has conferred upon the Archbishops of Manila a power of changing a foundation—a power which plaintiff denies to the Holy Father and the Councils of the Church. Plainly, it is not the Church, but the plaintiff, that is seeking to subvert the foundress' will.

The Roman Catholic Archbishops of Manila in their discretion from time to time as vacancies arose naturally and liberally gave preference to the nearest qualified or acceptable relative of the testatrix; but this practice, considered by plaintiff a binding practical construction, did not change the

plain meaning and effect of the language of the testatrix, or create an entirely new contract or obligation, nor could it in any sense create a legal right in the descendants enforcible in a civil court, or estop the duly constituted representatives and tribunals of the Church from exercising their discretion or applying the provisions of the Canon Law. As a matter of Church policy or of gratitude, and of respect for the memory of the foundress, it was, to repeat, quite natural that the Archbishops should, in practice, have thus shown favor to the heirs of the foundress, if deemed fit and qualified to be appointed. Similarly, the present Archbishop, while finding the infant plaintiff not qualified for the office of chaplain, nevertheless, as a matter of equity and grace, offered to defray the expenses of his education (R. 113). But the fact that their discretion was exercised in that manner in no way indicates that the several collating bishops ever considered that the Church was obligated so to do. In all probability, nothing was further from the minds of the collating bishops, of the chaplains appointed, or of any one else concerned, when the first five chaplains were appointed, than that they were thereby binding, or assuming an obligation of, the Roman Catholic Church forever to select an heir of the testatrix as beneficiary of the chaplaincy "without regard to his lack of ecclesiastical qualifications" (R. 328).

It is clear, moreover, that an unauthorized construction of the will could not, no matter how long continued, materially change or supplant the provisions of the trust as established by the testatrix herself and accepted by the Church. *Attorney General* v. *Corp. of Rochester,* 5 De G. M. & G. 797, 822; *Attorney General* v. *Corp. of Beverley,* 6 De G. M. & G. 256, 268; *Drummond* v. *The Attorney General,* 2 H. L. Cas. 837, 861.

III.

AS TO THE REQUIREMENTS OF THE ROMAN CATHOLIC CHURCH AND ITS CANON LAW FOR APPOINTMENT OF A COLLATIVE CHAPLAIN PRIOR AND SUBSEQUENT TO 1917.

The foregoing statement has shown that if we are limited to the record and exclude authorities of which the court below could well have taken judicial cognizance, the infant plaintiff was not qualified in any view of the case. It is not claimed that he was at all qualified under the Codex Juris Canonici of 1917, and as to the Canon Law prior to 1917 it is equally clear that he was not shown to be qualified so as to be entitled to appointment as a collative chaplain of the Roman Catholic Church. It should be borne in mind that the Archbishop, while expressly referring to the new provisions of the Canon Law, in his rejection of plaintiff, did not confine himself to that ground (R. 60).

There is no challenge, even if in reason there could be, of the right and duty of the Roman Catholic Archbishop of Manila prior to 1917 to exercise his discretion and judgment, and no authority has been or, we believe, after careful search, can be cited of any attempt heretofore to compel a bishop of the Roman Catholic Church by mandamus to appoint any particular candidate as a collative chaplain and overruling and nullifying the judgment or decision of the collating bishop as to the lack of qualifications of such candidate. It is indisputable that the plaintiff was not shown to have the slightest knowledge of "Christian Doctrine", and his lack of ordinary intelligence was conclusively demonstrated by his own testimony.

Reference, however, to competent writers on the Canon Law of the Roman Catholic Church prior to 1917 will likewise show the failure of the infant plaintiff to meet the elementary requirements of the Church for such a position.

We are not dealing with what are called "lay chaplaincies", but, under the express terms of the will, the deed of foundation and the decree of approval, with a "collative chaplaincy" with all that the term "collative" necessarily implies and with a foundation which indisputably became *"spiritual property of a perpetual character subject to the ecclesiastical forum and jurisdiction"* (R. 57).

It cannot be doubted that, at all times prior to 1917, the Archbishop of Manila had to consider and determine the qualifications of collative chaplains, and it is proper to infer that even if they were not qualified, for example, by being already tonsured, at the moment of appointment, he satisfied himself that each had the vocation necessary for the priesthood and would in good faith at least promptly qualify as a cleric. There is no proof in the record that the prior chaplains had not shown to the satisfaction of the Roman Catholic Archbishop of Manila qualifications for the career of the priesthood at the time of their appointment as chaplains. It is hardly reasonable to assume that the first chaplain who was, in 1820, only fourteen years of age, was as immature in mind and as ignorant as the present plaintiff was shown to be by his own testimony. As for the other four chaplains, it is fitting and proper for the court to assume, in the absence of proof to the contrary, that a Roman Catholic Archbishop exercised due care in their appointment as collative or ecclesiastical chaplains. This court in the case of civil officers is constantly applying the presumption of the performance of a duty which in propriety should have been performed. *Amer. Ry. Exp. Co.* v. *Lindenburg,* 260 U. S. 584, 589; *Butler* v. *Maples,* 9 Wall 766, 777-8. It is a maxim that *Omnia praesumunter rite et solemniter esse acta,* and this presumption may with particular propriety be applied to

the present case. Grave disregard of the interests and spiritual dignity of their Church, ought not lightly to be imputed, upon dubious evidence, to high prelates of the Roman Catholic Church in the performance of their ecclesiastical duties.

The Catholic Encyclopedia, published in 1907 with the endorsement of the official Censor of the Church and with the Imprimatur of John Cardinal Farley, Archbishop of New York, is undoubtedly one of the most reliable American works upon Catholic doctrine, tradition and practice. This scholarly and accurate work defines a collative chaplaincy, such as is involved in the present case, in the following language (vol. iii, p. 580):

> "A chaplaincy is called collative if the founder bestows his goods for spiritual purposes in such a way that the bishop is to erect the foundation into a benefice, for no layman can erect a sacred edifice or institute a spiritual office without the episcopal authorization. Such benefices are called collative because the bishop collates or confers the right to hold them upon the acceptable candidate, even if such candidate has been presented or nominated by lay authority. To exclude the episcopal confirmation would be to make it impossible for the chaplaincy to be held as an ecclesiastical benefice. Hereditary or family chaplaincies are those to which, by the will of the founder, the holder of the benefice is to be nominated by the testator's heirs or assigns. In such cases also the confirmation of the bishop is of absolute necessity."

Other definitions of and qualifications for a collative chaplaincy in the Roman Catholic Church will be found in

the appendix (pp. 3, 24, 27, 29, 30, 33, 37-9, 42, 52), which should establish beyond reasonable doubt the inaccuracy of the statement in the petition for the writ of certiorari (p. 4), already noted, that "prior to 1918 the only relevant requirement was one of age".

As to the requisite elementary knowledge of "Christian Doctrine", its important scope will also be found fully discussed and illustrated in *The Catholic Encyclopedia* (vol. v, p. 75), which shows its vital and far-reaching importance in Catholic practice and tradition, dating back at least to the Council of Trent held in 1545-1563. Other definitions and commentaries will also be found in the appendix (pp. 3, 48-50, 52, 53).

The various Protestant Churches likewise regard the "Christian Doctrine" as fundamental. For example, Dorner's "System of Christian Doctrine", in four volumes, and "Elements of Christian Doctrine", by T. A. Lacey, Canon of Worcester, are used and studied, as we are advised, in a great many Protestant seminaries. Hence, it would be indefensible, if not preposterous, to treat as negligible the testimony showing that prior chaplains were required to know the Christian Doctrine (R. 138-9).

IV.

AS TO THE SURPLUS INCOME OF THE CHAPLAINCY OVER AND ABOVE THE EXPENSE OF THE SIXTY MASSES.

It remains to consider the plaintiff's contention that although he has not been appointed as chaplain and has not at any time served or been qualified to serve as such, he is nevertheless entitled to all the surplus income arising from the property of the chaplaincy since the termination of the service of the prior chaplain, his father, who resigned or renounced in 1910 (R. 35). Stated in other words, the plaintiff's contention substantially is that he has inher-

ited somehow through his father, still living, a property right, enforcible in the civil courts, not only to the office of chaplain, but, even if not qualified to act as such, to all the net income of this spiritual or ecclesiastical property since a date prior to his birth!

Plaintiff's right to receive any part of the income of this property at all, however, is entirely contingent upon and inseparable from his alleged right to be appointed as chaplain. Only as chaplain, or as one who has a legal right to be appointed as such, can he claim any possible interest under the will of the foundress, or any of the other documents of the foundation. It is generally held, in this connection, that the right of a minister to the temporal fruits of his office is dependent upon his continued "rightful incumbency". *State ex rel. Hynes* v. *Catholic Church,* 183 Mo. App. 190, 202; *Satterlee* v. *Williams,* 20 App. D. C. 393, 417; *Chase* v. *Cheney, supra,* 58 Ill. 509, 535-6. Indeed, the plaintiff's own application to the Archbishop was, in itself, an acknowledgment of the Archbishop's jurisdiction and power of appointment and of the necessity of the ecclesiastical intervention. This dependency of the income upon the office, moreover, must assuredly have been recognized by the fourth and fifth chaplains, who resigned from the chaplaincy, and thereafter received no income (R. 102, 104, 293). It is not suggested why these descendants of the testatrix should have renounced a life estate in a funded income, if their rights were not in any way dependent upon ecclesiastical qualifications, or upon continued "rightful incumbency" in the ecclesiastical office.

Reference to the ecclesiastical writings on the Canon Law of the Roman Catholic Church quoted or cited in the appendix at pages 25, 32, 40 and 54, moreover, will show that prior to the codification of the Canon Law in 1917, a collative chaplain would not have been entitled to appro-

priate the whole surplus income for his own purposes. On the contrary, the rule or law of the Roman Catholic Church was that the surplus must be devoted to pious uses and good works.

But aside from the Canon Law and even if the plaintiff had established an heritable right or interest in the property of the testatrix, enforcible in the civil courts and regulated by the civil law, which is, of course, denied, the fact that the increase of the income from the property donated to the Church in 1816-1820 was from 180 pesos in 1820 to 12,000 pesos in 1926 and that because of such increase there is now a large surplus over the usual charge or cost of having sixty masses said per annum, would not establish any legal heritable right whatever in the infant plaintiff or in any of his family or class to such surplus.

On the contrary, the rule obtaining in the secular courts is in this respect precisely the same as the Canon Law on the subject, viz., the surplus belongs to the Church, for its general pious purposes. The provision of the deed of foundation of 1820 for the establishment of the collative chaplaincy provided for in the will of Doña Petronila de Guzman (R. 53), that the property should not be converted into any other estate "even though it be of a more pious character, protesting that if the contrary should be done from now until then, he (the executor) declares null and without value or effect whatever may be done or executed contrary to the tenor of these presents" (R. 53), is a provision not to be found in the will or in the decree of approval of the chaplaincy. It must, by the most elementary principles of construction, be read in the light of the subject matter with which the parties were dealing at the time, namely, an income of 180 pesos per year (R. 52), which was to be devoted to the saying of masses. By no reasonable construction can this language be interpreted

as having been intended to govern the disposition of a large surplus fund, should there be any in the far future, a contingency probably outside the contemplation of the parties at that time. The provision dealt solely with the use and application of the existing annual income of 180 pesos, and required its application solely to providing for the saying of the sixty masses, but it did not deal with or provide for the application of any surplus.

In the case of *Mormon Church* v. *United States* (1890), 136 U. S. 1, the opinion of the court was written by Mr. Justice Bradley, who made the following statement at page 53:

> "By the Spanish law, whatever was given to the service of God, became incapable of private ownership, being held by the clergy as guardians or trustees; and any part not required for their own support, and the repairs, books and furniture of the church, was devoted to works of piety, such as feeding and clothing the poor, supporting orphans, marrying poor virgins, redeeming captives and the like. Partida III. tit. 28, ll. 12-15. When property was given for a particular object, as a church, a hospital, a convent or a community, etc., and the object failed, the property did not revert to the donor, or his heirs, but devolved to the crown, the church or other convent or community, unless the donation contained an express condition in writing to the contrary. Tapia, Febrero Novisimo, lib. 2, tit. 4, cap. 22, sections 24-26."

This decision was cited with approval by Mr. Chief Justice Fuller, delivering the unanimous opinion of the court in *Ponce* v. *Roman Catholic Church* (1908), 210 U. S. 296, 323.

In the case of *The Attorney-General* v. *The Minister, etc.*, 36 N. Y. 452, 457-8, a testator in 1684 devised property to a certain church, "for the support and maintenance of their minister," and in the course of time the income from the property became greatly enhanced and greater than was required to pay for the support and maintenance of four ministers. The question arose as to the disposition and control of the surplus, and the court, per Grover, J., said:

> "In this case the property was devised to the defendant (church), and so far as the parties here are concerned, it must be held that it has the legal title. That title is charged with a trust of which the defendant is the sole beneficiary. That trust is fully discharged. It turns out, doubtless contrary to the expectations of the donors, that by the rise in the value of real estate, after a great lapse of time, there is a large surplus. When the property was given, it would hardly pay one minister. The income now pays four, and leaves an annual surplus of seventy thousand dollars. This surplus, after the entire satisfaction of the trust charged upon the property, I think, follows the legal title, and therefore belongs to the defendant, not charged with any special trust, but to be used for any of the purposes authorized by the corporation."

See also, *Attorney General* v. *Rectors and Churchwardens of Trinity Church*, 91 Mass. 422, 444; *American Academy of Arts and Sciences* v. *Harvard College*, 78 Mass. 582, 597; *In re Campden Charities*, 18 L. R. Ch. Div. 310, 323-326; *Bishop of Hereford* v. *Adams*, 7 Ves. Jr. 324, 331; *Attorney General* v. *Wansay*, 15 Ves. Jr. 230, 234; *Attorney General* v. *Dixie*, 2 Myl. & K. 342.

Under the doctrine of these decisions, as applied to a case like the present, where a pious testatrix and her executor

have transferred property to the Roman Catholic Church for spiritual purposes, there can be no doubt that the intention of the donor is best served, not by turning over the surplus to her heirs after the lapse of a century, to be used by them for private ends, but by its retention and its continued application by the Church to pious purposes. No object is more clearly charitable, in the sense of the law, than the advancement of religion and education. *Fairbanks* v. *Lamson*, 99 Mass. 533. The testatrix' main and only discernible intent was undoubtedly to secure the saying of masses for her soul and the souls of the specified relatives; the chaplaincy was a mere means to that end, a method of insuring that the Church, upon the receipt of the property, would assume the perpetual obligation to have these masses said. Even the dissenting opinion of Mr. Justice Johns, rereferred to and approved in the plaintiff's brief (p. 2), recognizes this when it states (R. 359): "In truth and in fact the house in question was constructed for the sole and specific purpose of providing sufficient rental to insure the payment of the amount required to pay for the specified number of masses". Beyond that, the foundress probably had no intent or interest in the chaplaincy whatever, and certainly did not intend to make its creation the instrument by which her heirs might obtain surplus money free and clear of any trust, or any church supervision or regulation, and, indeed, in contravention of the rules of Canon Law, and even in the absence of the ecclesiastical qualifications for the office she created! In her mind, as in the law, the emoluments received by the chaplain flowed only from, and were inseparably dependent upon, the ecclesiastical office of chaplain, and ought to be applied by the chaplain, if any, or by the Church, to pious uses after complying with the

express direction of the testatrix as to sixty masses per annum for the repose of the souls of herself and the relatives she named.

V.

AS TO THE ALLEGED RIGHT OF PLAINTIFF OR OTHER HEIRS OF TESTATRIX AS A CLASS.

Although the now alleged heritable right of plaintiff and other heirs of the testatrix as a class was not the theory or ground upon which the infant plaintiff instituted and tried the legal proceeding for a mandamus and accounting in the court of original jurisdiction, the claim will be here considered and disposed of because of the suggestion in the opinion below (R. 339-340). This point legally speaking presents for decision a claim which must necessarily be based upon the contention that the infant plaintiff, or rather the class he is alleged to represent, *inherited* some civil property right of reversion.

It is, however, very clear that there is no such legal right to reversion.

The question, it is submitted, is concluded by the views expressed by this court in *Mormon Church* v. *United States*, 136 U. S. 1, 53, and *Ponce* v. *Roman Catholic Church*, 210 U. S. 296, 323. It is further discussed in Perry on Trusts (sixth edition), vol. ii, sec. 744, p. 1233, where the author accurately and concisely summarizes the sound doctrine of the authorities he cites, as follows:

> "Heirs and personal representatives of a donor have no beneficial interest reverting or accruing to themselves from the breach or non-execution of a trust for a charitable use.

See also *Sickles* v. *City of New Orleans,* U. S. Circuit Court of Appeals, Fifth Circuit (1897), 80 Fed. 868, 873; *Associate Alumni* v. *Theological Seminary,* 163 N. Y. 417, 421-2; *Brigham* v. *Peter Bent Brigham Hospital,* 134 Fed. 513, 517; *Goode et al.* v. *McPherson et al.,* 51 Mo. 126, 127; *Bridgeport Public Library and Reading Room* v. *Burroughs Home,* 85 Conn. 309, 316; *Strong* v. *Doty,* 32 Wis. 381, 386; *Trustees of Princeton University* v. *Wilson,* 78 N. J. Eq. 1, 6; *Sanderson* v. *White,* 18 *Pickering* (Mass.) 328, 333-4.

Furthermore, it must be obvious that, if this proceeding be regarded as a suit in which the plaintiff is asking the court to change the present proceeding for a mandamus and accounting into a suit in equity for relief to a class of heirs as alleged beneficiaries of a trust, the class concerned must necessarily be, not the heirs generally, but only such heirs as are qualified for appointment to the chaplaincy in question. It is not even hinted that there is any class or any present individual heir so qualified. Even if there were any such persons, it is elementary that a class suit cannot be successfully maintained by one who is not himself qualified to be a member of the class. *Watson* v. *National Life & Trust Co.,* 189 Fed. 872, 884. And that the present infant plaintiff is not qualified to be appointed or serve as a Roman Catholic collative chaplain has been conclusively shown above in the statement of the case and the foregoing points.

VI.

AS TO THE ALLEGED VIOLATION OF PLAINTIFF'S LEGAL RIGHTS UNDER THE TREATY OF PARIS, THE ORGANIC ACT AND THE CONSTITUTION OF THE UNITED STATES.

It should be hardly necessary to argue at any length the contentions of the plaintiff as to the Treaty of Paris of December 10, 1898, the Organic Act and the Constitution of the United States. As we have seen, the infant plaintiff has not been shown to be qualified to be appointed and serve as a Roman Catholic collative chaplain even under the Canon Law existing prior to its codification of 1917. Such codification is not in any true or reasonable sense retroactive, for it only applies in the future and does not purport to apply nor in fact or reason does it apply to chaplains already appointed and then serving as such. The qualification of chaplains to be thereafter appointed is a matter which is and ought to be within the power of the governing body of the Roman Catholic Church as of any other organized Church. The Roman Catholic Archbishop in 1820 did not enter into any contract which bound the Church not to change in the future, for centuries to come, the qualifications of its chaplains.

The present argument of plaintiff is adequately refuted by the learned justices writing the opinions of the court below (R. 337-8 and 349-51). Some of the pertinent language of Mr. Justice Street has already been quoted above (at p. 24 of this brief); and the language of the concurring opinion of Mr. Justice Malcolm is equally persuasive, viz.:

> "The portion of the Organic Act, the Act of Congress of August 29, 1916, section 3, paragraph 5, providing 'That no law impairing the obligation of con-

tracts shall be enacted' is not applicable since the 'law' there mentioned is an Act of the Philippine Commission or Legislature or an ordinance or resolution of a municipal council, and does not include an ecclesiastical law promulgated by the Pope for the Catholic world. The legislative power of the state has not undertaken, as in the *Dartmouth College* Case, to remodel the charter of an institution in most important particulars without the consent of the corporators. But following the theory pertaining to the impairment of the obligation of contracts, and by analogy applying the same principles to the canon law, it yet remains to be said that there are limitations on the application of the constitutional provision. Thus, as significant restrictions, the state cannot abridge or weaken any of the essential powers inherent in government; the state cannot abdicate its trust over property; and the Legislature cannot withdraw from its successors the power to take appropriate measures under the police power. Not only this, but charter contracts are subject to state regulation. A party operating under a charter must conform to such rules as the state may establish. Added conditions or duties may be imposed provided they do not amount to a change in the obligations or in the substantial rights of a party. *Changes may be made in the general laws even though incidental injury may result.*

"Construing the Canon Law as we must if we are to determine if it has retroactive and destroying effect, it is apparent that the highest power in the Catholic Church provided a law universal in character operative on all chaplaincies after it went into effect. The Pope did no more than did the civil authorities of Spain

when in 1841 they enacted a law regulating chaplaincies. As a matter of internal discipline, the Church was attempting to make certain that all persons filling chaplaincies had the necessary training to perform their duties. General regulations were prescribed to secure the ends for which chaplaincies were erected. In the particular case before us, the father chaplain, the incumbent of a 'collative chaplaincy', was expected by the testatrix 'to celebrate sixty masses annually', and it would not be at all unreasonable for the canon law to prescribe qualifications for the holder of the chaplaincy sufficient to permit him to say the masses personally. The will did not negative this in any manner when the property was turned over for spiritual uses. *As far as the will went, it intended to create a collative rather than a laical chaplaincy,* thus subjecting the institution to the authority and the laws of the Church, as every collative chaplaincy is so subjected."

CONCLUSION.

For the reasons above discussed, it is submitted, that the judgment of the Supreme Court of the Philippine Islands was right and should, therefore, be affirmed.

New York, April, 1929.

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